87-967

Supreme Court, U.S.
FILED
DEC 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1987

AUDREY PRICE, NAILA KURDI, SHARON ATRA, EUGENE STERN, and PATRICIA MARQUARDT, individually and on behalf of all others similarly situated, and HOPE FAIR HOUSING CENTER

Petitioners

vs.

SAMUEL PIERCE, in his official capacity as Secretary of the United States Department of Housing and Urban Development; A. D. VAN METER, in his official capacity as Chairman of the Illinois Housing Development Authority; JAMES KILEY, in his official capacity as Executive Director of the Illinois Housing Development Authority; HAWTHORN RIDGE ASSOCIATES, an Illinois limited partnership; VERNON HILLS ASSOCIATES II, an Illinois limited partnership; TRAILS VENTURE, an Illinois limited partnership; GRANWOOD GARDENS ASSOC., an Illinois limited partnership; PRAIRIEBROOK VENTURE, an Illinois limited partnership; ARROWHEAD APARTMENT ASSOCIATES, an Illinois limited partnership,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the defendants violate the Housing and Community Development Act of 1974 by withholding one-half of the committed Section 8 contract units from rental by eligible low income families?

2. Did the defendants violate federal contracts by withholding one-half of the Section 8 contract units for use by eligible low income families, and may plaintiffs enforce those contracts as third party beneficiaries?

3. Did the defendants violate plaintiffs' rights under the due process clause of the Fourteenth Amendment to the United States Constitution by withholding Section 8 units without written standards, written notice or an opportunity for some meaningful hearing or review?

4. Did HUD's inaction, by acquiescing to the withholding of Section 8 contract units from use by eligible families, violate the Administrative Procedures Act?

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OPINIONS BELOW

The opinion by the Court of Appeals for the Seventh Circuit in No. 86-1906 (July 8, 1987), is published at 823 F.2d 1114 (7th Cir. 1987) and included in the appendix at A1. The Order denying Motion For Rehearing (August 4, 1987), is included at A15.

JURISDICTION

The judgment of the Court of Appeals was entered July 8, 1987. The plaintiffs' Motion For Rehearing was denied on August 4, 1987, and this Petition filed within 90 days thereafter. This Court has jurisdiction to review the judgment by Writ of Certiorari under 28 U.S.C. §1254(1).

STATUTES AND REGULATIONS INVOLVED

The following statutes and regulations central to the case are set forth in the appendix:

42 U.S.C. §1437f	(A.73)
5 U.S.C. §706	(A.76)
42 U.S.C. §1983	(A.78)
24 C.F.R. §883.101 (1979)	(A.79)
24 C.F.R. §883.104(d) (2) (1979)	(A.80)
24 C.F.R. §883.305(c) (1979)	(A.81)
24 C.F.R. §883.327 (1979)	(A.83)
24 C.F.R. §883.328 (1979)	(A.84)

STATEMENT OF THE CASE AND INITIAL JURISDICTION

In 1976 the defendants, six real estate developers, the Illinois Housing Development Authority ("IHDA") and the United States Department of Housing and Urban Development ("HUD"), signed a series of 40 year contracts which established commitments to rent a specified number of apartments to eligible low income families to implement the federal New Construction Section 8 Program ("Section 8 Program") for the purpose of aiding lower income families in obtaining a decent place to live. 42 U.S.C. §1437f. In exchange for these commitments, the developers received guaranteed rent for a specific number of apartments and low interest financing under state law to construct these developments. Notwithstanding these commitments and benefits received, the six real estate developers who are defendants in this case, following a policy initiated by IHDA, failed to rent one-half of the specified Section 8 rental units to eligible lower income families from 1976 to present. HUD declared unlawful the defendants' policy of failing to rent one-half of these Section 8 units to eligible families, but acquiesced to the practice and failed to take any corrective, enforcement action. Thus one-half of the appropriated and committed federal funds are not being used to further the needs of eligible families under this federal statutory housing program for the poor.

The Section 8 contracts signed by HUD, IHDA and the developers were for the express purpose of implementing the federal statutes. These contracts set forth with specificity the number of Section 8 contract units, number of bedrooms and rent levels. (A.161) However, IHDA and the developers claim the right to absolute discretion to rent as few Section 8 units to eligible, lower income families as they choose. Such discretion would permit the defendants to rent zero units to eligible families. Defendants have exercised that discretion and failed to rent one-half of the Section 8 contract units to eligible families, and in the face of HUD inaction, claim absolute immunity from legal challenge.

Petitioners, and the class members they represent, are lower income persons who are on the waiting lists for admission to one or

more of the defendants' apartment complexes.[1] They are eligible for and in need of safe, decent and sanitary housing as provided under the Section 8 Program. In 1975 the defendants identified and targeted the needs of the plaintiff class for adequate housing as justification to HUD for their participation in the Section 8 new construction program. Plaintiffs' needs established the basis for commitments agreed to by the defendants.[2] The petitioners, whose needs for adequate housing remain unfulfilled and exacerbated by the failure to rent one-half of the available, committed Section 8 units, challenged this practice and sought injunctive relief.

This action was commenced on September 12, 1983 against the six developers, HUD and IHDA. Plaintiffs challenged the failure to rent one-half of the Section 8 units to eligible families on the waiting lists as violating: 1) Plaintiffs' rights as third party beneficiaries to the federal contracts; 2) Plaintiffs' rights under 42 U.S.C. §1437f and 24 C.F.R. §883 (1979); 3) Plaintiffs' due process rights under the Fourteenth Amendment; 4) Plaintiffs' rights against HUD under the Administrative Procedures Act, 5 U.S.C. 701 *et.seq;* and 5) a pendant state claim. The eligible families sought injunctive relief and damages. Jurisdiction of the District Court was invoked under 28 U.S.C. §1331 (in that the claims raised federal questions under the United States Housing Act, federal regulations and federal contracts); 28 U.S.C.§1343(3) and (4)(in that the §1983 claim

[1]On April 4, 1984, the District Court certified a plaintiff class as follows: All persons who: (i) have applied or will apply during the pendency of this action to receive Section 8 assistance at the defendants Apartment Complexes; or (ii) have been placed on Section 8 waiting lists at the defendants Apartment Complexes or will be placed on such waiting lists during the pendency of this action; or (iii) were or will be denied access to such waiting lists during the pendency of this action; provided that they are financially eligible for Section 8 assistance and otherwise acceptable for tenancy at the defendant housing complexes in accordance with pre-existing written tenant selection plans.

[2]The original allocation of subsidies by HUD to IHDA was for 20 percent of the units in each apartment complex. In 1976 IHDA requested that the allocation be increased to 40 percent, stating to HUD that the increase was "in conformance with our housing need study" and that the additional subsidy was "imperative . . . to allow us to assist very low, low and moderate income families in the spirit and intent of the congressional mandate enumerated in the Housing and Community Development Act of 1974". HUD approved the increase to 40 percent based upon these recommendations.

asserted a denial of federal civil rights). A plaintiff class was certified including all eligible persons for Section 8 who were on waiting lists for admission to the developers' apartment complexes.

Immediately after filing suit, plaintiffs discovered that IHDA and developers had for the first time altered the federal contracts, by reducing the number of Section 8 units under contract, proposing a transfer of contract units to one of the six developments. IHDA and the six developers submitted the proposed contract alterations to HUD for its approval. On plaintiffs' Motion For Temporary Restraining Order and Preliminary Injunction, HUD and private defendants agreed to take no action to further effect or transfer subsidies. HUD ultimately withheld the units which the private parties had tried to transfer, and plaintiffs then amended their Complaint to challenge HUD's approval of the contract alterations which reduced the number of available Section 8 contract units at five of the developments. This challenge to HUD was under the Administrative Procedure Act, 5 U.S.C. §701, et.seq.

On November 23, 1983, the district court granted defendants' Motion to Dismiss the plaintiffs' third party beneficiary claims and actions premised upon an implied right of action under 42 U.S.C. §1437f. IHDA was dismissed as a party defendant based upon Eleventh Amendment sovereign immunity, but IHDA's chairman of the Board and Executive Director were subsequently joined as party defendants. On June 25, 1985, upon cross Motions For Summary Judgment, the district court granted summary judgment for defendants and denied plaintiffs' Motion, except on a portion of the APA claim. The district court did declare HUD's approval of the contract alterations unlawful for having failed to consider all relevant factors. The transfer of Section 8 units was thus invalidated, and HUD subsequently restored all of the original Section 8 units to the developers. The plaintiffs state law claim was denied without prejudice.

On appeal, the Seventh Circuit Court of Appeals affirmed. The Seventh Circuit affirmed the district court's ruling that the plaintiffs had standing , but also upheld the denial of relief to plaintiffs under the United States Housing Act, third party beneficiary, due process and APA claims. Thus, the Court's decision leaves the defendants immune from legal challenge and free to rent as many, or indeed as few, Section 8 units to eligible families as they choose.

I. THE DECISION BELOW ALLOWS PARTIES TO FEDERAL LOW INCOME HOUSING CONTRACTS TO SABOTAGE THE HEART OF THE SECTION 8 PROGRAM AND DIVESTS ELIGIBLE FAMILIES OF ANY METHOD TO CHALLENGE THEIR ABSOLUTE, UNFETTERED DISCRETION.

The Section 8 Program was enacted as part of the Housing and Community Development Act of 1974, P.L. 93-383, the result of bipartisan efforts on the part of Congress to provide decent, safe and sanitary housing to lower income families. 42 U.S.C. §1437f. As part of the Section 8 Program, Congress appropriated federal funds to be distributed by HUD to State Housing Finance Agencies, such as IHDA.[3] Based upon surveys of the needs of low income families for housing conducted by IHDA, and subject to HUD approval, these federal funds were distributed to local developers through a series of contracts to subsidize a specific number of eligible low income families. 24 C.F.R.§883.104(d)(2), §883.305(c)(1979). By utilizing agencies such as IHDA as middlemen to distribute federal rent payments, Congress was able to piggy-back its rent subsidy program onto state and federal programs. Thus, Congress created low cost financing opportunities for developers seeking to build residential housing, In Illinois these developers in the instant case received low interest financing from IHDA pursuant to Illinois law to construct the apartment complexes, in addition to guaranteed rental payments earmarked for low income families in forty percent of the units. Ill. Rev. Stat. ch. 67½ §301, *et.seq.*

Between 1974 and 1979, more than 425,000 assisted units had been started nationwide under the related Section 8 new construction and substantial rehabilitation programs. (A.106,142). In April, 1981 the United States General Accounting Office (GAO) published a report regarding the occupancy of Section 8 housing by ineligible households, identifying it as a significant and costly

[3]In the particular Section 8 program involved here, Congress appropriated funds to be distributed by HUD to State Housing Financing Agencies, such as IHDA. 24 C.F.R. §883.101 *et.seq.* IHDA in turn conducted surveys to determine the needs of eligible families, and implemented the program through a series of contracts.

problem. (A.87,111). In the Chicago metropolitan area alone, the GAO Report concluded that at least 1,000 of the 8,900 units were leased to ineligible households. (A.92). While the GAO lacked statistical data to accurately estimate the rental to ineligible families nationwide, it concluded that "What is certain is that the incentives to do so, and the market forces that make it possible, will increase as the cost of housing grows and scarcity of quality rental housing becomes more prevalent." (A. 143). The GAO estimated the direct and indirect costs occasioned by allowing ineligible households to occupy Section 8 units could reach as high as $410 million. (A. 99).

In response to the GAO Report, Congress amended the Section 8 statute in 1981 to clarify and expressly prohibit the rental of Section 8 units to ineligible families. Pub. L. No. 97-35 (1981). See Hearings on S.1027 and 1074 before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing and Urban Affairs, 97th Cong. 1st Sess. at 448(1981). While it was obviously not Congress' purpose in 1974 to enact the Section 8 program to rent committed Section 8 units to ineligible families, Congress was reluctant in 1981 to disturb prior contractual obligations undertaken to implement the program; thus, Congress made the 1981 clarifying amendment prospective only. *See* Vol. 49, No. 153 Fed. Reg. 31396 (August 7, 1984). Yet despite direct Congressional attempts to cure the problem, over 425,000 assisted units in over 5,000 apartment complexes pre-date the 1981 action by Congress, and thus were not addressed by the amendment.

The Seventh Circuit's decision leaves these defendants free to rent as few Section 8 contract units to eligible families as they choose. The defendants have done so for more than ten years, leaving one-half the Section 8 units unused by eligible families. Indeed, if market forces and the whims of the private developers coincide, rental of one-half of the Section 8 units to eligible families may subsequently be reduced to zero. The lower court's decision leaves this obvious undermining of Congressional intent to the absolute, unfettered discretion of IHDA and the private developers. In light of HUD's inexplicable inaction and complicity throughout the rental of units to ineligible families, its oversight responsibilities imposed pursuant to statute and the contracts are non-existent, and thus provide no remedy.

The Seventh Circuit, in assessing plaintiffs' rights under third

party beneficiary, due process and even statutory claims, rejects plaintiffs' claims largely because they are "applicants" as opposed to "tenants". *Cf. Holbrook v. Pitt*,643 F. 2d 1261 (7th Cir. 1981). Thus, the Seventh Circuit's decision leaves the defendants, and any developers operating 425,000 other Section 8 units, immune from all legal challenges. The plaintiffs are eligible families in need of adequate housing. Each of the named plaintiffs and class members are on waiting lists at one of the six developments. Yet, the plaintiffs are left in a "Catch-22" situation, unable to challenge the defendants' practices as violation of the statute, contracts and constitution, as a result of their applicant status. Once an applicant is selected as a Section 8 tenant, any claim regarding non-utilization of Section 8 contract units would be moot. The lower court's tenant/applicant distinction applied against all claims not only leaves the defendants free to decide how many Section 8 units to rent, but also leaves them immune from legal challenge.

HUD has ignored its obligation under federal regulations to enforce commitments established under this program. Indeed, HUD's complicity and inaction is compounded by the fact that HUD's Chicago Area Office, repeatedly, declared the rental of these Section 8 units to ineligible families unlawful. (A.149-158). These HUD administrative interpretations of the pre-1981 obligations, made prior to the commencement of litigation, unambiguously conclude that the rental of one-half of the Section 8 units violates the federal statute, HUD regulations and the express terms of the Section 8 contracts themselves.[4] Further, HUD published an administrative Handbook in 1985 which confirmed its prior interpretation that the rental of pre-1981 Section 8 units to ineligible families was unlawful if eligible applicants on the waiting list existed. The Handbook ambiguously states:

(b) If the HAP Agreement was signed before October 1, 1981,

[4]On at least three occasions HUD made the following findings in correspondence involving at least one of the defendants in the instant case: "Failure to lease to eligible tenants is a violation of your Contract and constitutes grounds for all available legal remedies...." (April 19, 1982); "Any unauthorized policy of leasing to ineligible tenants above the allowable program limit results in the unlawful deprivation of federally-funded rental assistance to *eligible applicants*." (emphasis added) (June 9, 1982); "...our records show that this project is being managed in violation of federal regulations." (June 25, 1982) (A.149-158).

owners may admit ineligible families up to the limit specified in the HAP Contract (i.e. 10 or 20 percent of the contract units). This does NOT require prior approval from HUD or the contract administrator, but owners *must first* take all of the actions required by Paragraph 2-7c.

2-7c *Actions Owners Must Take Before Admitting Ineligibles*

(1) Admit all available eligible applicants, unless there is good cause for denying them assistance. (See paragraph 2-21).

(2) Take all reasonable steps to attract eligible families, including using marketing activities most likely to attract eligible applicants.

(3) Place in the files of all ineligible tenants who are admitted a written certification that the steps required in (1) and (2) above have been completed. (a.159).

The defendants took none of the above actions required by the Handbook. While HUD attempted to dodge the impact of the Handbook during litigation, the district court found HUD's logic "notably unpersuasive", in its attempt to avoid the mandates of its own handbook. *Price v. Pierce,* 615 F. Supp. 173, 185, n.4 (N.D. Ill. 1985). While significant weight should have been accorded these administrative Handbooks and interpretations by HUD, the Seventh Circuit's opinion inexplicitly provides no mention of them. *See Ford Motor Credit v. Milhollin,* 444 U.S. 555, 566 (1980).

The Seventh Circuit decision, holding that no statutory or contractual obligations can be found to bind the parties, failed to examine closely even one of the numerous regulatory and contractual provisions which exist. Rather than examine the specific, relevant language of federal regulations and Section 8 contracts, the Seventh Circuit embarked upon speculative discourse in which the court concluded it can be left to "IHDA the decision of how closely to hold the developers to their commitments in the face of such changed circumstances as experience might reveal." (A.13). Thus, "commitments" become meaningless under the Seventh Circuit's decision. In the instant case, IHDA presented no changed circumstances. The developers provided no justification for breach of contracts, but rather claimed it was their prerogative.

Congress devised the Section 8 program to be implemented through a series of contracts on behalf of eligible lower income

families indicating Congressional intent that binding, enforceable obligations be created. 42 U.S.C. §1437f(b)(2). Although 42 U.S.C. §1437f(b)(2) did not originally establish the specific contract terms, as did the 1981 amendment, the Senate Report explained that this statutory provision did establish parameters for the contracts, which would provide the number of units to be made available to lower income families:

> Such contracts would establish the maximum monthly rent (including utilities and all maintenance and management service charges) which the owner is to receive per dwelling unit with respect to which monthly assistance payments are to be made pursuant to this subsection, *the number and size* (by bedrooms) of the dwelling units *with respect to which such assistance payments are to be made, and the length of time for which such assistance payments are to be made.* (emphasis added).

S. Rep. No, 93-693, 93d. Cong., 2d Ses. 127 (1974)

Thereafter, when Congress made annual appropriations, the legislative history indicates the Congress believed that monies it appropriated year after year were to be used to meet obligations established by the contracts. Thus, House Report 94-1220 concerning the Housing Authorization Act of 1976 stated:

> This appropriation provides for payments required by annual contribution contracts for subsidized housing programs.

H.R. Rep. No. 94-1220, 94th Cong., 2d Sess. 7(1976).

The Senate Report, S. Rep. 94-974 in discussing the amount appropriated states:

> These funds are to be used to make payments pursuant to contracts entered into under various housing assistance programs including the new Section 8 program. . .

S. Rep. No. 94-974, 94th Cong., 2d Sess. 13(1976).

The legislative history of the Community Development Act of 1977 is similar. Congress appropriated funds upon its understanding of apartment units under contract. The House Report provides:

> The committee recommends in this bill an authorization for fiscal year 1978 of $1,232,120,000 of additional annual contributions contract authority under the United States Housing Act of 1937. It is expected that this additional authority will be sufficient to assist approximately 400,000 additional

housing units for lower income American families through the Section 8 housing assistance payments and public housing programs.

H.R. Rep. 95-236, 95th Cong., 1st Sess. 13(1977). Finally, Congress stated:

> Although the Committee is well aware of the Department's failure in recent years to translate unit reservation into housing and of the shortcomings and criticisms of the Section 8 program, it expects the Department to act promptly to overcome these problems. The committee believes that the Department can and will take the necessary steps to assure that funds authorized on this bill (and released in appropriations acts) will quickly and efficiently translate into the housing so desperately needed by our low-income persons.

U.S. Cong. and Admin. News, p. 2896, House Rpt. 95-128, Community Dev. Act of 1977.

As with the statute, federal regulations reveal that utilization of contract units is required. Federal regulation 24 C.F.R. §883.327(1979) titled, "Reduction of number of contract units for failure to lease to eligible families" imposes upon owners an obligation to rent Section 8 units to eligible families. HUD may impose sanctions if less than 80 percent of the units are rented. 24 C.F.R. §883.327 (1979). (A.83, 84).

Congress allocated Section 8 funds based upon the number of assisted housing units which would be made available to the poor. Thus, the defendants, in failing to distribute appropriated, committed funds, effectively impounded these federal funds. This impoundment of federal funds has been viewed with disfavor by this Court and justifies review. *See Train v. City of New York,* 420 U.S. 35(1975).

The Section 8 contracts, signed by HUD, IHDA and the developers, were devised by HUD to bind the parties to fulfill the statutory objective, and thus contain predictable, binding provisions such as:

> Section 1.3 Families to be Housed. HFA Assistance.
>
> (a) Families to be Housed. The Contract Units are to be leased by the Owner to eligible lower-income Families ("Families") for use and occupancy by such Families soley as private dwellings.
>
> (b) HFA Assistance.
>
> (1) The HFA (IHDA) hereby agrees to make housing assistance

> payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe and Sanitary housing pursuant to Section 8 of the Act. . . .(A.170,171).

The contracts signed by HUD and IHDA set forth the exact number of Section 8 units to be rented to eligible families, the size by number of bedrooms, size by square footage and rent levels. (A.161). Numerous other contract provisions safeguard the intended Congressional purpose, including requirements to implement the contracts "expeditiously" and to use the funds soley for the purpose of housing eligible lower income families. (A.161).

The Seventh Circuit's decision avoids the enforceability of the contracts by holding that the contracts were lawfully modified. However, the only facts suggesting a "modification" is the repeated failure of the parties to live up to their contractural obligation to rent Section 8 units to eligible families for ten years. Thus, under the Seventh Circuit's novel analysis, repeated breach of contract is transformed to the equivalent of "lawful modification." The Court of Appeals made this finding, despite the contract language, which required HUD and IHDA approval of any substantive modifications of the contracts. (A.164). *See also* 24 C.F.R. §883.328 (A.84). Certainly rental of section 8 contract units to eligible families is at the heart of these contracts, thus requiring HUD approval. Yet, the only actual contract modification sought by the parties, and indeed subsequently approved by HUD, was invalidated by the district court for failing to consider the needs of eligible low income families. No other contract modification exists to support the Seventh Circuit's convenient escape from the actual contract terms.

When Congress enacts a federal statute to provide housing for the poor, and provides for the allocation of funds through the execution of contracts, and when one-half the funds are unused in breach of the contractual commitments, the federal courts should not readily abdicate their enforcement role, leaving private parties free to ignore Congressional intent and immune from legal challenge. The decision below merits this Court's review.

II. THE DECISION BELOW CONFLICTS WITH THE DECISION OF THE NINTH CIRCUIT CONCERNING DUE PROCESS RIGHTS OF ELIGIBLE APPLICANTS TO SECTION 8 HOUSING.

This decision of the Seventh Circuit, in conjunction with its previous decision in *Eidson v. Pierce*, 745 F.2d 453 (7th Cir. 1984), denying eligible applicants for Section 8 housing enforceable rights under the due process clause of the Fourteenth Amendment, conflicts with the decision of the Ninth Circuit Court of Appeals.

In *Ressler v. Pierce*, 692 F.2d 1212 (9th Cir. 1982), the Ninth Circuit specifically held that eligible applicants, primary beneficiaries of the Section 8 program, had a sufficient claim of entitlement in Section 8 benefits such that applicants had a property interest protected by the due process clause of the Fourteenth Amendment. The Ninth Circuit in *Ressler* was primarily addressing the question of applicant's due process rights in establishing tenant selection criteria, rather than expenditure of committed Section 8 funds, as in the instant case.[5] Thus, certain notice and waiting list procedures were required in order to comply with due process standards.

However, the Seventh Circuit has denied applicants a protectable property interest. Citing its previous decision in *Eidson v. Pierce*, 745 F.2d 453 (7th Cir. 1984), the Seventh Circuit in *Price* held that eligible applicants had no protectable property interest in Section 8 benefits. The *Eidson* decision, addressing tenant selection issues as did the *Ressler* court, held that applicants had no property interest because of owner discretion in tenant selection, and rejected the Ninth Circuit's analysis. In so doing, the *Eidson* court observed, however, that a protectable interest would exist when operation of the Section 8 program offered "the concepts of fairness and non-arbitrariness which are at the heart of the constitutional requirement of due process of law." *Eidson v. Pierce, supra*, 745 F.2d at 464, *citing Holbrook v. Pitt*, 643 F.2d 1261, 1279 (7th Cir. 1981).

Price is a case involving such arbitrariness and abuse of discretion by defendants' failure to utilize federal funds for housing the poor.

[5]In *Ressler* the Ninth Circuit did address Plaintiff's contention that failure to rent all Section 8 units to eligible families violated the Administrative Procedure Act, 5 U.S.C. §706. The 9th Circuit held that HUD's policy of requiring 80 percent utilization could withstand an APA challenge.

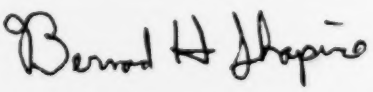
Price involves the unfettered discretion of private real estate developers otherwise immune from review or legal challenge. The unfairness to the eligible , needy poor strikes at the heart of the program, for without available units the program ceases to function. These notions of unreviewable and unfettered discretion have been found by this Court as useful in determining that a property interest exists. *See Barrows v. Jackson*, 346 U.S. 249 (1953); *U.S. v. SCRAP*, 412 U.S. 669 (1972).

Courts in numerous other instances have held that applicants for various governmental benefit programs have a protectable property interest. *See, e.g., Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979) (parole applicant); *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1967) (bar applicant); *Griffith v. Detrich*, 603 F.2d 118 (9th Cir. 1979), *cert. denied*, 445 U.S. 970 (1980) (general assistance applicants); *Wright v. Califano*, 587 F.2d 345, 354 (7th Cir. 1978) (social security applicants); *Holmes v. New York City Housing Authority*, 398 F.2d 262 (2d Cir. 1968) (public housing applicants). Various courts have also held that Section 8 participants have a protectable property interest if their benefits are terminated. *Simmons v. Drew*. 716 F.2d 1160 (7th Cir. 1983); *Ferguson v. Metropolitan Housing Agency*, 485 F.Supp. 517 (M.D. Tenn. 1980); *Brezina v. Dowdall*, 472 F.Supp. 82 (N.D. Ill. 1979). Therefore it is proper for the Court to review the instant case in order to resolve the conflict in the Circuits.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals.

Respectfully submitted,



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